Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978.

No. 78-459

BERNHARD ROSEE,

Petitioner,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO, AN ILLINOIS CORPORATION, SIDNEY C. HAMPER, MARTIN H. MILEK, ROY C. LOFTUS, RICHARD ROSE, RAYMOND COMENZO, AND THOMAS HERR, INDIVIDUALLY AND AS MEMBERS OF THE COMMITTEE OF ARBITRATION OF THE BOARD OF TRADE OF THE CITY OF CHICAGO; JULIUS MAYER, WILBERT E. HUGE, ROBERT L. DAVID, THOMAS E. HOSTY, ROBERT C. LIEBENOW, INDIVIDUALLY AND AS PRESIDENT OF THE BOARD OF TRADE OF THE CITY OF CHICAGO; WARREN W. LEBECK, INDIVIDUALLY AND AS SECRETARY OF THE BOARD OF TRADE OF THE CITY OF CHICAGO; JAMES J. COUGHLIN; ALBERT W. KIBBY AND SAM GORDON,

Respondents.

BRIEF OF BOARD OF TRADE RESPONDENTS* IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT

This case arose from what was essentially a simple accounting dispute between a professional commodity trader (Bernhard Rosee) and his brokerage firm (Baggot & Morrison) which Rosee has attempted over the years to transform into a *cause celebre*. The dispute arose some 19 years ago when Rosee and Donald Morrison, through arbitration at the Chicago Board of Trade, sought to resolve questions concerning a trading debit.

Despite the dramatics which Rosee has employed, this action is at heart a routine controversy over whether a debt exists.

Notwithstanding this case's basically mundane nature, it has, in the course of 18 years and in various trappings, been before the Superior and Circuit Courts of Cook County, Illinois, the United States District Court for the Northern District of Illinois (twice), the United States Court of Appeals for the Seventh Circuit (twice), the Appellate Court of Illinois (twice), the Illinois Supreme Court (twice), and on three occasions, this Court (on petitions for *certiorari*, all of which were denied).[1]

It is now before this Court a fourth time. We respectfully submit that this latest petition for writ of *certiorari* is without merit and should be denied, as were Rosee's previous petitions to this Court.

This fourth petition for *certiorari* specifically concerns a post-judgment proceeding instituted by Rosee under Section 72 of the Illinois Civil Practice Act (Ill. Rev. Stat., ch. 110, § 72)[2]

1. See, *e.g.*, *Rosee* v. *Board of Trade of the City of Chicago*, 311 F. 2d 524 (7th Cir. 1963), *cert. denied*, 374 U. S. 806 (1963); *Rosee* v. *Board of Trade of the City of Chicago*, No. 63 C 1348 (N. D. Ill. 1966), *aff'd*, U. S. Ct. of Appeals (7th Cir.) Nos. 15886 and 16373, *cert. denied*, 393 U. S. 1055 (1969), *rehearing denied*, 393 U. S. 1124 (1969); *Rosee* v. *Board of Trade of the City of Chicago*, 43 Ill. App. 3d 203, 356 N. E. 2d 1012 (1st Dist. 1976), *appeal denied*, 65 Ill. 2d 580 (1977), *cert. denied*, 434 U. S. 837 (1977); 57 Ill. App. 3d 228 (1st Dis. 1978), *appeal denied*, . . . Ill. 2d . . . .(1978), *petition for cert. filed* (No. 78-459). In addition, the matter has been reviewed by both the Commodity Exchange Commission and its successor, the Commodity Futures Trading Commission. See CCH *Comm. Futures L. Rep.*, ¶ 20,140 (Transfer Binder). A further extension of this cause, a 1976 suit brought by Rosee in the United States District Court for the District of Columbia, was dismissed on April 26, 1977 on grounds of *res judicata* and collateral estoppel, the Court concluding, *inter alia*, that "Mr. Rosee has had his day in Court." Memo. Order, p. 5, *Rosee* v. *Bergland*, Civil No. 76-1721 (appeal dismissed). Indeed, Rosee has had 18 years in every conceivable court and before every conceivable administrative agency.

2. Section 72 of the Illinois Civil Practice Act provides in pertinent part:

(Footnote continued on next page.)

seeking to vacate, on the basis of so-called "newly discovered evidence," the judgment orders entered in January of 1972 against Rosee and in favor of the Board of Trade Respondents.[3] Rosee's petition for relief under Section 72 was denied on the merits by the Circuit Court of Cook County on March 4, 1976, after 14 evidentiary and related hearings. Rosee then appealed, urging that the trial court be reversed and that a new trial against the Board of Trade Respondents be ordered.

Following briefing and oral argument, the Illinois Appellate Court ruled that Rosee's petition under Section 72 of the Illinois Civil Practice Act was legally defective in that it (a) was barred by the statute's 2 year limitation period (having been filed 2 years and 10 months after trial, and there being no pleading or proof of fraudulent concealment) and, (b) Rosee had failed to show due diligence in bringing his petition, as required by Illinois law. [Rosee App. A, p. 7] Additionally, the Appellate Court, upon a review of the evidentiary record, agreed with trial court's ruling on the merits that Rosee had failed to introduce any credible or competent evidence to support his theories under Section 72. [Rosee App. A., pp. 8 & 9]. Subsequently, the Illinois Supreme Court denied leave to appeal.[4]

(Footnote continued from preceding page.)

> (1) Relief from final orders and judgments, after 30 days from the entry thereof may be had upon petition as provided in this section. . . .
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> * * *
>
> (3) The petition must be filed not later than 2 years after the entry of the order or judgment. Time during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed shall be excluded in computing the period of 2 years.
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> * * *

3. *Affirmed*, 43 Ill. App. 3d 303 356 N. E. 2d 1012 (1st Dist. 1976), *appeal denied*, 65 Ill. 2d 580 (1977), *cert. denied*, 434 U. S. 837 (1977).

4. It should be noted that Rosee states in his petition for *certiorari* (page 2) that the "jurisdiction of this Court is invoked pursuant to 28 U. S. C. Sec. 1254." Section 1254 is inapplicable, however. It relates solely to review of cases in the Federal courts of

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Shorn of his numerous misstatements and inflammatory rhetoric,[5] the question which Rosee presents to this Court for review is simply whether the Appellate Court of Illinois and the Illinois Supreme Court were *wrong* in exercising (or declining to exercise) their constitutional and statutory review powers in a manner unsatisfactory to Rosee. Manifestly, this does not raise a question under the Fourteenth Amendment.[6]

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appeals. [Rosee's other jurisdictional citations are also inapposite.] We must assume that Rosee intended to invoke section 1257 of Title 28 ("State courts; appeal; *certiorari*"), which provides for review by writ of *certiorari* of "final judgments or decrees rendered by the highest court of a State in which a decision could be had" where, *inter alia*, "any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States." Yet Rosee, on page 1 of his petition, prays for review of the judgment of the Appellate Court of Illinois, and not the order of the Illinois Supreme Court denying his petition for review by that court. Nor did Rosee, in either his appeal to the Illinois Appellate Court or in his petition for leave to appeal to the Illinois Supreme Court, assert or claim any right or privilege under the Constitution or statutes or the United States.

5. Throughout his petition for *certiorari*, Rosee assumes as fact many of the very matters that have been decided against him, time and time again. [See particularly pages 6, 11, and 12.] Rosee also devotes a substantial portion of his petition to matters wholly outside of the record. The so-called "spurious trading card" referred to on page 5 (see also pages 7-9 and 11) was the subject of separate proceedings in the Circuit Court of Cook County instituted by Rosee *after* the March 4, 1976 order denying Rosee's Section 72 petition. These separate proceedings were concluded on April 21, 1978, with the Court once again ruling against Rosee *on the merits*. No appeal was taken, and the time for such an appeal has long since expired. See Ill. S. Ct. Rule 303(a).

6. Rosee may be attempting to once again create the false impression that the Chicago Board of Trade can do anything it desires and be immune from judicial inquiry. (See Rosee Pet., pp. 12 and 13.) This is a gross perversion of what the law provides. See, *e.g.*, *Ryan* v. *Cudahy*, 157 Ill. 108, 122-24 (1895); *Case & Co., Inc.* v. *Board of Trade of the City of Chicago*, 523 F. 2d 555 (7th Cir. 1975); *Lagorio* v. *Board of Trade of the City of Chicago*, 529 F. 2d 1290 (7th Cir. 1976), *cert. denied*, 426 U. S. 950 (1976). A similar argument was advanced by Rosee in the predecessor to this case and was rejected by the United States Court of Appeals for the Seventh

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Rosee's petition for *certiorari* is but a rambling and tired rehash of allegations and theories which have been consistently rejected by the courts.[7] Rosee has shown no special and important reasons whatsoever as to why a writ of *certiorari* should issue.[8] This petition, like his previous petitions, is wholly without merit. Acordingly, the Board of Trade Respondents respectfully urge that Rosee's Petition for writ of *certiorari* be denied.

Respectfully submitted,

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(Footnote continued from preceding page.)

Circuit. *Rosee*, 311 F. 2d 527-28, *cert. denied*, 374 U. S. 806 (1963). It should also be noted that Rosee is not challenging the constitutionality of Section 72 of the Illinois Civil Practice Act.

7. See note 1, *supra*.

8. Rosee's petition for *certiorari* does not come within gunshot of satisfying the criteria set forth in Supreme Court Rule 19. Most particularly, there is no showing that either the Illinois Supreme Court or the Illinois Appellate Court "has decided a federal question of substance" not heretofore determined by this Court, or has decided it in a way "probably not in accord" with applicable decisions of this Court. The decision below related solely to the application of Illinois law and involved no federal question whatsoever. See Rosee App. A.